

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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BRIAN ROGERS,

Plaintiff

v.

MORAN TOWING & TRANSPORTATION CO., INC.,

Defendant

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CIVIL ACTION NO. 04-11448-RCL

**PARTIES' JOINT PRE-TRIAL MEMORANDUM**

In accordance with the Court's Order for Final Pre-trial Conference, plaintiff Brian Rogers and defendant Moran Towing Corporation ("Moran")<sup>1</sup> hereby submit their Pre-Trial Memorandum for the pre-trial conference to be conducted on December 29, 2005. This memorandum follows the sequence set out in the Court's Pre-Trial Conference Order.

1. Trial Counsel

Plaintiff

David F. Anderson  
LATTI & ANDERSON LLP  
30-31 Union Wharf  
Boston, MA 02109  
(617) 523-1000

Defendant

James B. Re  
SALLY & FITCH LLP  
225 Franklin Street  
Boston, Massachusetts 02110-2804  
(617) 542-5542

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<sup>1</sup> Defendant's correct name is "Moran Towing Corporation," not "Moran Towing & Transportation Co., Inc.," as the defendant is misnamed in the case caption and throughout the complaint.

## 2. Concise Summary of the Parties' Positions

### Plaintiff's position

The Plaintiff alleges that in February and July of 2003 the Plaintiff injured his back while employed as a deckhand on the defendant's vessel the Tug JAMES TURECAMO. With respect to the February injury the Plaintiff alleges that he injured his back while leaning over the rail lifting a line out of the water. The Plaintiff alleges that the Defendant was negligent and the vessel unseaworthy in so far as there were too few men assigned to perform the task in question and that having one deckhand lift the line in question posed an unreasonable risk of harm to the deckhand. The Plaintiff further alleges that the Defendant was negligent and the vessel was unseaworthy in so far as the JAMES TURECAMO was not equipped with synthetic lines as is the case with other vessels in Defendants fleet. The synthetic lines are far lighter and easier for a single crew member to handle. The Plaintiff alleges after returning to work in July of 2003 the plaintiff reinjured his back while lifting the cover to a paint locker. The Plaintiff claims that this injury was simply a re-aggravation on the original February injury.

The Plaintiff alleges that as a result of the February incident the Plaintiff sustained a compression fracture at the T12 and L1 vertebrae. The Plaintiff further alleges that as a result of the alleged incident the Plaintiff injured his lumbar disks resulting in numbness and tingling into his left lower extremity. The Plaintiff alleges that as a result of the alleged incident he is permanently disabled from his prior occupation as a deckhand on a tug boat and as a result has lost earning capacity measured by the difference between his earnings as a deckhand and his residual earning capacity. Plaintiff further seeks damages for pain suffering and loss of function.

### Defendant's Position

Plaintiff Brian Rogers claims that he was injured while working in Moran's employ as a deckhand on Moran's vessel, the tug JAMES TURECAMO, on February 12 and July 24, 2003.<sup>2</sup>

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<sup>2</sup> Plaintiff states in his complaint that his alleged injuries occurred on February 7 and July 25, 2003, but Moran believes that plaintiff acknowledges that he actually claims injury dates of February 12 and July 24, 2003.

Mr. Rogers claims that he was injured that he was injured in separate incidents on those dates because of the vessel's unseaworthiness and the defendant's negligence. He claims also that he has not been provided with the maintenance and cure that are due him, and that he is unable to return to work as a seaman because of his alleged injuries.

The defendant maintains that the vessel was seaworthy at all times, that it did not engage in any negligent conduct, and that it has provided the plaintiff with all of the maintenance and cure that was due him. Moreover, the defendant is informed and believes that the plaintiff has recovered from any injury or medical condition that he suffered, and is fully capable of returning to work without physical limitation.

3. Waived claims or defenses

None.

4. Stipulated facts

Moran admits that plaintiff Brian Rogers was serving in its employ as a deckhand aboard the tug, JAMES TURECAMO, on February 12 and July 24, 2003, and that it owned the tug at those times.

On November 23, 2005, Moran propounded Requests for Admissions to the plaintiff. Not having received any response, Moran takes it that plaintiff admits the matters concerning which the admissions were requested. Those matters are as follow (the language that follows is the full text of the Requests for Admissions, and is set out in bold typeface to distinguish it):

**1. a. The three photographs appended to this First Request for Admissions as Exhibits A-1, A-2, and A-3 are true and accurate copies of the tug JAMES TURECAMO.**

**b. The photographs marked Exhibits A-2 and A-3 fairly and accurately depict the paint locker where plaintiff Brian Rogers claims he was injured on July 24, 2003, and that same paint locker is visible to the left of the life ring attached to the rail of the tug depicted in the photograph marked Exhibit A-1.**

**2. a. The four pages of documents appended to this First Request for Admissions as Exhibit 2 are true and authentic copies of memoranda, reports, records, or data compilations pertaining to plaintiff**

Brian Rogers kept in the regular course of business of Charlton Memorial Hospital, made at or near the time of the events reflected in the documents by, or from information transmitted by, a person with knowledge, and it was the regular practice of Charlton Memorial Hospital to make or maintain as part of its records each memorandum, report, record, or data compilation that comprises Exhibit 2.

b. Nowhere in the documents that comprise Exhibit 2 is it stated that plaintiff Brian Rogers has or ever had a herniated disk.

c. Nowhere in the documents that comprise Exhibit 2 is it stated that plaintiff Brian Rogers has or ever had a ruptured disk.

3. a. The 23 pages of documents appended to this First Request for Admissions as Exhibit 3 are true and authentic copies of memoranda, reports, records, or data compilations pertaining to plaintiff Brian Rogers kept in the regular course of business of Newport Hospital, made at or near the time of the events reflected in the documents by, or from information transmitted by, a person with knowledge, and it was the regular practice of Newport Hospital to make or maintain as part of its records each memorandum, report, record, or data compilation that comprises Exhibit 3.

b. Nowhere in the documents that comprise Exhibit 3 is it stated that plaintiff Brian Rogers has or ever had a herniated disk.

c. Nowhere in the documents that comprise Exhibit 3 is it stated that plaintiff Brian Rogers has or ever had a ruptured disk.

4. a. The ten pages of documents appended to this First Request for Admissions as Exhibit 4 are true and authentic copies of memoranda, reports, records, or data compilations pertaining to plaintiff Brian Rogers kept in the regular course of business of Family Mediacenter (Dr. Robert A. Carrellas), made at or near the time of the events reflected in the documents by, or from information transmitted by, a person with knowledge, and it was the regular practice of Family Mediacenter (Dr. Robert A. Carrellas) to make or maintain as part of its records each memorandum, report, record, or data compilation that comprises Exhibit 4.

b. Nowhere in the documents that comprise Exhibit 4 is it stated that plaintiff Brian Rogers has or ever had a herniated disk.

c. Nowhere in the documents that comprise Exhibit 4 is it stated that plaintiff Brian Rogers has or ever had a ruptured disk.

5. a. The 27 pages of documents appended to this First Request for Admissions as Exhibit 5 are true and authentic copies of memoranda, reports, records, or data compilations pertaining to plaintiff Brian Rogers kept in the regular course of business of David A. Johnson, D.O., Inc. made at or near the time of the events reflected in the documents by, or from information transmitted by, a person with knowledge, and it was the regular practice of David A. Johnson, D.O., Inc. to make or maintain as part of its records each memorandum, report, record, or data compilation that comprises Exhibit 5.

b. Nowhere in the documents that comprise Exhibit 5 is it stated that plaintiff Brian Rogers has or ever had a herniated disk.

c. Nowhere in the documents that comprise Exhibit 5 is it stated that plaintiff Brian Rogers has or ever had a ruptured disk.

6. a. The eight pages of documents appended to this First Request for Admissions as Exhibit 6 are true and authentic copies of memoranda, reports, records, or data compilations pertaining to plaintiff Brian Rogers kept in the regular course of business of Sumit Das, M.D. made at or near the time of the events reflected in the documents by, or from information transmitted by, a person with knowledge, and it was the regular practice of Sumit Das, M.D. to make or maintain as part of his records each memorandum, report, record, or data compilation that comprises Exhibit 6.

b. Nowhere in the documents that comprise Exhibit 6 is it stated that plaintiff Brian Rogers has or ever had a herniated disk.

c. Nowhere in the documents that comprise Exhibit 6 is it stated that plaintiff Brian Rogers has or ever had a ruptured disk.

d. Dr. David Johnson was one of plaintiff Brian Rogers' treating physicians as of January 9, 2004, and it was Dr. Johnson who referred Mr. Rogers to Dr. Das.

e. As of January 9, 2004, Dr. Das stated the following opinion to Dr. Johnson:

"I have reviewed the MRI of the cervical spine of Mr. Brian Rogers. It is relatively normal with some minimal cervical spondylosis. He now complains of persistent pain radiating down his legs. I have again reviewed the thoracic and the lumbar MRI and do not believe that the findings here

**are causing significant neural foraminal compression. I do believe that this patient can return to work at this time based upon these findings.”**

**f. Dr. Das never informed plaintiff Brian Rogers that he had suffered a herniated disk.**

**g. Dr. Das never advised plaintiff Brian Rogers that he should not return to work as a crewman on tugboats.**

5. Contested issues of fact

- Whether the vessel was seaworthy.
- Whether Moran was negligent.
- Whether, and if so, to what extent, the plaintiff was injured while working on board the defendant's vessel.
- If the vessel was unseaworthy or Moran was negligent, whether the unseaworthiness or the negligence was a legal cause of the plaintiff's injuries.
- If the vessel was unseaworthy or Moran was negligent, and the unseaworthiness or the negligence caused the plaintiff to be injured, the extent (if any) to which the plaintiff was or is disabled from working or experienced pain and suffering as a consequence of his injuries.
- If the vessel was unseaworthy or Moran was negligent, and the unseaworthiness or the negligence caused the plaintiff to be injured, the extent (if any) to which the plaintiff's own negligence was a legal cause of his injuries.
- Whether Moran met its obligation to provide maintenance and cure to the plaintiff.
- The Plaintiff's Damages.
- Whether Plaintiff is entitled to additional maintenance and cure.
- Pre-Judgment interest.

6. Jurisdictional questions

- Whether Moran is subject to the Court's personal jurisdiction in this case.
- Whether venue is proper in this district.

7. Questions raised by pending motions

None.

8. Issues of law

None, other than the liability and damages issues identified in section 5.

9. Amendments to the pleadings

None.

10. Additional matters

None

11. Length of trial

The parties estimate that trial will take four 9:00 am to 1:00 pm trial days.

12. Names and addresses of witnesses

See attached List of Witnesses.

13. List of proposed exhibits

See attached List of Exhibits proposed by defendant.

14. Jury Instructions

The parties request the opportunity to submit proposed Jury Instructions as the trial date approaches.

15. Jury Voir Dire – Proposed Questions

See attached Jury Voir Dire Questions proposed by the defendant.

BRIAN ROGERS  
By his attorneys,

MORAN TOWING CORPORATION  
By its attorneys,

*/s/ DAVID F. ANDERSON*

*/s/ JAMES B. RE*

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James B. Re (BBO #413300)  
SALLY & FITCH LLP  
225 Franklin Street  
Boston, Massachusetts 02110-2804  
(617) 542-5542

Dated: December 28, 2005

List of Witnesses

Brian C. Rogers – fact witness - plaintiff  
17 Vernon Avenue  
Newport, RI

Kevin Denning – fact witness – tug captain  
935 Byford Blvd  
Endwell, NY 13760  
607-757-9237

James Mottola – fact witness – tug mate  
117 Krewson Terrace  
Willow Grove, PA 19090

Joe Wargo – fact witness – tug engineer  
2205 Clubhouse Road  
North Fort Myers, FL 33917

Wes Daggett – fact witness – tug deckhand  
423 Winslow Mills Road  
Waldoboro, ME 04572  
207-832-4613

Peter Keyes – fact witness – Moran's operations manager  
Moran Towing Corporation  
50 Locust Avenue  
New Canaan, CT 06840  
203-442-2800

James Newman – fact witness – Moran's claim manager  
Moran Towing Corporation  
50 Locust Avenue  
New Canaan, CT 06840  
203-442-2800

Darlene Ambrosini – fact witness – Moran's case manager  
PO Box 404  
Little Neck, NY 11363  
718-229-7272

Personnel Department Representative / Record Keeper – fact witness – plaintiff's former employer  
The Hotel Viking  
One Bellevue Avenue  
Newport, RI 02840

Chief Engineer Robert Riegel Jr. – fact witness – plaintiff's supervisor at Hotel Viking  
The Hotel Viking  
One Bellevue Avenue  
Newport, RI 02840



Sumit K. Das, M.D. – expert – plaintiff’s treating physician  
1524 Atwood Avenue  
Johnston, RI 02919

Dr. Robert A. Carrellas – expert – plaintiff’s treating physician  
Family MediCenter  
700 Aquidneck Avenue  
Middletown, RI 02842

David A. Johnson, D.O. – expert – plaintiff’s treating physician  
161 Chase Rd  
Portsmouth, RI 02871-3243

**LIST OF EXHIBITS  
PROPOSED BY DEFENDANT MORAN TOWING CORPORATION**

1. Daily Log from tug JAMES TURECAMO for February 12 and 13, 2003 and July 24 and 25, 2003.
2. Reports of Injury Claims dated February 13 and July 25, 2003, signed by the plaintiff.
3. Plaintiff's employment application for the Hotel Viking dated August 22, 2003.

In addition, Moran may offer in evidence the following documents, all of which are appended to its

Requests for Admissions:

4. The three photographs of the tug JAMES TURECAMO appended to the First Request for Admissions as Exhibits A-1, A-2, and A-3.
5. The four pages of documents appended to the First Request for Admissions as Exhibit 2, comprising the records of Charlton Memorial Hospital pertaining to its treatment or examination of the plaintiff.
6. The 23 pages of documents appended to the First Request for Admissions as Exhibit 3, comprising the records of Newport Hospital pertaining to its treatment or examination of the plaintiff.
7. The ten pages of documents appended to the First Request for Admissions as Exhibit 4, comprising the records of Family Medicenter (Dr. Robert A. Carrellas) pertaining to its treatment or examination of the plaintiff.
8. The 27 pages of documents appended to the First Request for Admissions as Exhibit 5, comprising the records of David A. Johnson, D.O., Inc. pertaining to its examination or treatment of the plaintiff.
9. The eight pages of documents appended to the First Request for Admissions as Exhibit 6, comprising the records of Sumit Das, M.D. pertaining to his examination or treatment of the plaintiff.

**APPENDIX OF JURY VOIR DIRE  
PROPOSED BY DEFENDANT MORAN TOWING CORPORATION**

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**VOIR DIRE QUESTIONS TO POTENTIAL JURORS PROPOSED BY DEFENDANT  
MORAN TOWING CORPORATION**

Defendant Moran Towing Corporation hereby requests that special *voir dire* questions be asked of potential jurors, as follows:

1. Have you or any close family member or friend ever worked as a crewmember on a ship or a boat?
2. Have you or any close family member or friend ever had a back injury?
3. Have you or any close family member or friend ever been a plaintiff or a defendant in a lawsuit involving a claim of personal injury?

MORAN TOWING CORPORATION  
By its attorneys,

/s/ JAMES B. RE

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(617) 542-5542

Dated: December 28, 2005